

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CONNIE K. HORN

Claimant

VS.

WESLEY MEDICAL CENTER

Respondent

AND

CNA INSURANCE COMPANIES

Insurance Carrier

Docket No. 233,384

ORDER

Claimant appealed Administrative Law Judge Jon L. Frobish's June 5, 1998, preliminary hearing Order.

ISSUES

Claimant made a claim for medical and temporary total disability benefits for an alleged work-related low-back injury. Claimant alleged a date of accident from January 1998 through April 1, 1998. The Administrative Law Judge denied claimant's request for preliminary benefits finding claimant failed to prove that her work activities during that period caused her low-back injury. Claimant contends the preliminary hearing Order should be reversed because she did establish that her low-back injury was related to her work activities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether the claimant suffered a work-related accidental injury is a jurisdictional issue listed in K.S.A 1997 Supp. 44-534a.

Claimant, in a single lifting accident, initially injured her low back in 1994 while working for the respondent. Respondent provided medical treatment for that injury through

Dr. Stephen Sparks. Dr. Sparks treated claimant conservatively with medication and physical therapy. Claimant testified she was not satisfied with his treatment and quit seeing Dr. Sparks on her own in 1995. However, claimant testified her back remained symptomatic, and she sought further medical treatment with her personal physician, Hugh I. Ekengren, M.D.

Dr. Ekengren had claimant undergo an MRI examination on January 24, 1998, which revealed an L4-5 herniated disc. The doctor took claimant off work because of her low-back discomfort in both January and February of 1998.

Claimant testified, that on April 4, 1998, she suffered such severe pain and discomfort in her low back that she had to go to the emergency room at Columbia Wesley Medical Center where she was employed. At that time, Dr. Ekengren referred claimant for consultation with neurosurgeon Paul S. Stein, M.D. Dr. Stein examined claimant and recommended immediate surgical treatment. On April 7, 1998, he performed a right L4-5 partial discectomy. Dr. Stein released claimant to return to work for the respondent on June 2, 1998, the day of the preliminary hearing.

Claimant testified all of her low back medical treatment from Dr. Ekengren, including the surgery performed by Dr. Stein, was claimed and paid for through her health insurance and not declared as related to her work. Claimant did testify, however, that she notified the respondent through her supervisor and two charge nurses that her current low-back problems were work related. Claimant also testified her low back worsened from January 1998 through April 1, 1998.

Nevertheless, the Appeals Board finds claimant has failed, at this juncture of the proceedings, to prove that her work activities performed from January 1998 through April 1, 1998, had a causal relationship to her L4-5 herniated disc and need for surgery. Claimant testified she worked for respondent as a material management clerk. She testified the job required her to lift, bend, and stoop. But the job duties were not described as repetitive duties. The medical records admitted into evidence at the preliminary hearing do not attribute claimant's low-back condition to her work. Although claimant testified her back worsened between January 1998 and April 1998 and she notified respondent of the worsening, at the same time, claimant continued to have her health insurance pay for medical treatment for her low-back condition. Additionally, claimant admitted she knew she was required to file an accident report for a work-related injury and failed to file such a report.

Therefore, the Appeals Board concludes the Administrative Law Judge's preliminary hearing Order should be affirmed, and claimant's request for preliminary hearing benefits is denied.

WHEREFORE, the Appeals Board finds that Administrative Law Judge Jon L. Frobish's June 5, 1998, preliminary hearing Order, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
P. Kelly Donley, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director